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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/928,273	08/09/2001	John D. Ralston	9824-075-999	6570

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EXAMINER	
GEREZGIHER, YEMANE M	
ART UNIT	PAPER NUMBER
2144	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/928,273	RALSTON ET AL.	
	Examiner	Art Unit	
	Yemane M. Gerezgiher	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 February 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. The request for continued examination filed on 02/08/2006 has been entered. Claims 1-26 remain pending in this application.

Response to Arguments/ Remarks

2. Applicant's remark filed 02/08/2006 has been fully considered but they are not persuasive.

The inventive entity merely compares the teachings of Reichmeyer with the specification (Remarks Page 7-8), but not with the broad claimed language of this pending application. The inventive entity recites, "For example, considering a WCDMA cellular phone, a person of ordinary skill in the art will not conclude that a configuration method designed for remote configuration of a computer network can be used for configuring multiple hardware blocks in the wireless communication device". A glance at the specification of the pending application as a whole, the examiner note that the present invention is or may be directed to configuring a wireless communication device (such as a wireless phone) in a cellular network to run a wireless communication application or protocol in an environment of a WCDMA (Wideband Code Division Multiple Access), communication applications directed to the plurality of cellular communication applications (such as CDMA, GSM and multiple other communication applications), however such features are not claimed.

Nevertheless, the applicant maintains to employ broad language, which

includes the use of words, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly as reasonably possible, in determining patentability of the disclosed invention. Likewise, Applicant uses broad terms, which have broad meaning in the art. Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intend broad interpretation be given to the claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See In re Van Geuns, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Lastly, the current claims infer coverage breadth which is inconsistent with breadth of the disclosure and are not found distinguishable above the prior art of record.

Note: The examiner could have made this office action a final action, however, the examiner gives another opportunity, so that the inventive entity can amend the notoriously broad claim language to limit the claim to cover the intended invention as recited in the specification of the application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 2, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichmeyer et al. (U.S. Patent Number 6,286,038) hereinafter referred to as Reichmeyer.

As per claims 1 and 14: Reichmeyer disclosed:

a) receiving a request to configure the communication device to run a communication application, the communication device having a plurality of function blocks with a fixed portion of hardware and a flexible portion of hardware, the same plurality of function blocks capable of operating a plurality of communication applications; (See ABSTRACT, Column 3 Lines 13-41: Reichmeyer disclosed a configuration server receiving a request from a network device on the network for configuration, the network device having therein a multiple functional blocks which are static or flash (flexible) portions in support of executing communication applications).

b) evaluating a capability of the fixed portion and the flexible portion of hardware of the communication device for implementing the communication application; (See Fig. 4 Column 2 Lines 50-64, Column 3 Lines 13-41, Column

7 Lines 1-26 and Column 8 Lines 18-42: Reichmeyer disclosed receiving information determining the status of static (fixed) and flash portions of the network device regarding the propagated to the configuration server and determining appropriate configuration parameters by learning about its physical (hardware portion) and the logical configuration information of the Network devices).

c) transmitting configuration information only for the flexible portion of hardware of the communication device to enable it to operate the communication application; (See Fig. 4, Steps 74-78 and Column 2 Lines 50-52) and

d) transmitting an identification of the communication application to the communication device. (See Column 1 Lines 36-44).

The teachings of Reichmeyer substantially disclosed the invention as claimed. Furthermore, in an alternative embodiment Reichmeyer suggested that the invention might be applicable to implementation of wireless environments (Reichmeyer, Column 11, Lines 64-66). An artisan now working with the invention of Reichmeyer would have been able to make use of the suggested possible embodiment described in Reichmeyer. Further, in the art of networking, a communication device to be a wireless communication device (such as a handheld portable device, PDA, a wireless capable laptop computer and so forth) connected to the network and configured to establish a

connection with a communication network using a communication application was commonly known in the art at the time the invention was made. Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Reichmeyer to make use of the suggested embodiment of configuring a device in a wireless environment in order to enable the wireless communication devices to communicate on the communication network.

As per claims 2 and 15, wherein the configuration information is hardware configuration parameters. (See ABSTRACT: Reichmeyer disclosed configuration information parameters)

5. Claims 3-13 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reichmeyer et al. (U.S. Patent Number 6,286,038) in view of Kung et al. (U.S. Patent Number 6,775,267) hereinafter referred to as Kung.

Kung disclosed a QoS application determining data-transmitting rate of the bandwidth in communication with the network device (claims 7-9 and Claims 20-22: See Abstract, Column 2 Lines 30-52). Kung further disclosed processing bill information of usage according to the QoS and adjusting or reducing cost by determining desired and actual QoS used and dropping the QoS when finishing service and billing the user accordingly (claims 11, 12, 24

and 25: See Column 16 Lines 4-29, Column 34 Lines 1-34 and Column 35 Lines 44-65) and evaluating user subscription to the service (claims 5, 18: See Column 40 Lines 25-51). Kung disclosed configuring the network devices for plurality of communication applications (Claims 3 and 16: See Column 23 Lines 14-24), upgrading and changing communication application configurable on the network devices (claims 4 and 17: Column 23 Lines 25-29 and Column 35 Lines 35-43) and transmitting specific information in to the flash memory of the network device to upgrade the required configuration of the communication application (Claim 6: Column 23 Lines 14-24). Receiving a user offer based one the user-desired rate/price for a specific QoS and offering the user the requested QoS according to the offer made by the user (claims 13 and 26) was disclosed by the teachings of Kung. See Abstract, Column 2 Lines 20-52 and Column 34 Lines 1-55.

Claims 10 and 23 have substantially similar limitations as in claims 1 and 14 above, thus these claims are rejected with the same rationale. With respect to the rejection applied to claims 1 and 10 above, Reichmeyer substantially disclosed the limitation of claims 10 and 23. However, Reichmeyer failed to teach sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the communication device to allow it to function at the selected

quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device. However, as evidenced by the teachings of Kung, sending information regarding QoS (Quality of Service) and its cost to the client of the network communication device allowing the user to select a desired class of service and based on the selection of specific quality of service at a determined cost and transmitting configuration information to the communication device to allow it to function at the selected quality QoS where the configuration information is directed to the programmable (flexible) part of the communication device was known in the art at the time the invention was made. See Abstract, Fig. 7a-7c, Column 2 Lines 30-52, Column 3 Lines 20-46, Column 33 Line 66 through Column 35 Line 21 and Column 35 Lines 45-65.

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Kung related to allowing users to select desired QoS in a communication network and transmitting configuration information configuring the communication network device to function/execute the application program in according to the selected cost and QoS selected by the end-user in order to allow users get service in accordance with desired QoS selected in real time at a cost the user(s) desire (See Column 3 Lines 20-52) "so that the priority of a given communication can be dynamically altered according to customer preferences, variable billing rates and tariffs, the user's

bit rate requirements, the user's desired quality of service, traffic patterns, and/or congestion." See Column 7 Lines 27-34.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yemane M. Gerezgiher whose telephone number is (571) 272-3927. The examiner can normally be reached on 9:00 AM - 6:00 PM Mon - Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER